

# **EXHIBIT 5**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ) Chapter 11  
RS FIT NW LLC, ) Case No. 20-11568 (TMH)  
Debtor. )  
----- )  
24 HOUR FITNESS WORLDWIDE, )  
INC., )  
Plaintiff, )  
)  
-VS- ) Adv Pro. No. 20-51051 (TMH)  
)  
CONTINENTAL CASUALTY COMPANY; )  
ENDURANCE AMERICAN SPECIALTY )  
INSURANCE COMPANY; STARR )  
SURPLUS LINES INSURANCE )  
COMPANY, ALLIANZ GLOBAL RISKS )  
US INSURANCE COMPANY; LIBERTY )  
MUTUAL INSURANCE COMPANY; )  
BEAZLEY-LLOYD'S SYNDICATES )  
2623/623; ALLIED WORLD )  
NATIONAL ASSURANCE COMPANY; )  
QBE SPECIALTY INSURANCE )  
COMPANY; and GENERAL SECURITY )  
INDEMNITY COMPANY OF ARIZONA, )  
Defendants. )

Videotaped deposition of MERCEDES CARTHENON,  
PH.D. taken before CAROL CONNOLLY, CSR, CRR, and Notary  
Public, pursuant to the Federal Rules of Civil Procedure  
for the United States District Courts pertaining to the  
taking of depositions, at 10 S. Wacker Drive, Chicago,  
Illinois, commencing at 10:02 a.m. on the 16th day of

Job No. CS6059198

1           There were present at the taking of this  
2 deposition the following counsel:

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36           appeared on behalf of the Defendant  
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1 CLYDE & CO. by  
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QBE Specialty Insurance Company;

25 ALSO PRESENT:  
26 Mr. Milo Savich, Videographer

1  
2                   I N D E X  
3     VIDEOTAPED DEPOSITION OF MERCEDES CARTHENON, Ph.D.  
4         TAKEN August 16, 2023  
5

	EXAMINATION BY	PAGE
6	Mr. Ingerman	7
7	Mr. O'Carroll	90
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11	EXHIBITS MARKED	
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13	Exhibit 1           Plaintiff's Expert	9
14	Disclosure Pursuant	
15	to Federal Rule of	
16	Civil Procedure 26(a)(2)	
17		
18	Exhibit 2           Washington Post Article,	20
19	As the BA.5 variant	
20	spreads, the risk of	
21	coronavirus reinfection	
22	grows, By Joel	
23	Achenbach	
24	Exhibit 3           August 18, 2021 letter	24
	from David E. Weiss to	
	Mercedes Carthenon and	
	attachment	
21	Exhibit 4           Annals of Internal	45
22	Medicine, Transmission	
23	of SARS-CoV-2: A Review	
24	of Viral, Host, and	
	Environmental Factors,	
	by Eric A. Meyerowitz,	
	M.D., et al.	

1	Exhibit 5	Article: Occurrence and transmission potential of asymptomatic and presymptomatic SARS-CoV-2 infections: A living systematic review and meta-analysis by Diana Buitrago-Garcia, et al.	49
5	Exhibit 6	McLarens report, May 15, 2020	74
6	Exhibit 7	November 23, 2022 letter from Allison Stock, Ph.D. to Mr. Ingerman, et al., etc.	81
9	Exhibit 8	Expert report of Dr. Alexis Sauer-Budge	84
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1 epidemiologist to comment on the course of the pandemic,  
2 what we knew when, and a bit about how the virus itself  
3 was spread in the population. And I was told that I  
4 would be asked questions about -- that would rely on my  
5 expertise as an epidemiologist.

6 Q And you've never served as an expert witness  
7 before, right?

8 A No, I have never served as an expert witness.

9 Q Were you asked as part of your assignment to  
10 determine whether COVID-19 was actually present at any  
11 particular 24 Hour Fitness location?

12           A       No, I was not ever asked to determine whether  
13           COVID-19 was actually present.

14 Q Were you ever asked to determine as part of  
15 your assignment whether or not COVID was actually  
16 spreading at any particular 24 Hour Fitness location?

17 MR. CARROLL: Objection to form.

18 THE WITNESS: I was not asked to assess whether or  
19 not COVID-19 was actually spreading.

20 MR. INGERMAN: Q Okay. Let's mark this as No. 3.

21 (Exhibit 3 marked as requested)

22 Q All right. Dr. Carthenon, we've handed what we  
23 marked as Carthenon Deposition 3. This is a letter from  
24 David Weiss at Reed Smith to you dated August 18th, 2021.

1           Fitness shared with me, and what I did was I used these  
2           criteria to make an indeterminate determination about  
3           whether or not I thought their assumption of the presence  
4           was reasonable. And the reason that I think their  
5           assumption that it was present is reasonable is -- based  
6           on consistency, analogy, and biological plausibility.

7           MR. INGERMAN: Q Okay. Let me make sure I  
8           understand this. Do you have an opinion one way or the  
9           other as to whether COVID-19 was present at any location  
10           -- at any 24 Hour Fitness location?

11           MR. CARROLL: Objection to form.

12           THE WITNESS: No, I do not have an opinion.

13           MR. INGERMAN: Q Do you have an opinion one way or  
14           the other whether COVID-19 was spreading at any 24 Hour  
15           Fitness location?

16           MR. CARROLL: Objection to form.

17           THE WITNESS: I do not have an opinion about whether  
18           it was spreading.

19           MR. INGERMAN: Q Okay. All right. Are you aware  
20           of any other epidemiological study that used the Bradford  
21           Hill criteria to determine the presence of SARS Co-V 2 at  
22           any particular location?

23           A I -- I am not aware. Quite frequently when we  
24           publish in the scientific literature, part of the paper

1 T. Connor O'Carroll, Esq.

2 cocarroll@reedsmit.com

3 August 30, 2023

4 RE: 24 Hour Fitness Worldwide, Inc v. Continental Casualty

5 8/16/2023, Mercedes R. Carnethon , PhD (#6059198)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 erratas-cs@veritext.com

16  
17 Return completed errata within 30 days from  
18 receipt of testimony.

19 If the witness fails to do so within the time  
20 allotted, the transcript may be used as if signed.

21  
22 Yours,

23 Veritext Legal Solutions  
24  
25

1       24 Hour Fitness Worldwide, Inc v. Continental Casualty Company  
2       Mercedes R. Carnethon , PhD (#6059198)

## E R R A T A S H E E T

PAGE passim LINE passim CHANGE Dr. Carnethon's name  
is misspelled throughout the transcript as "Carthenon." This  
mispelling should be corrected as the witness's name is  
"Mercedes R. Carnethon"

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9 REASON \_\_\_\_\_

10 PAGE 31 LINE 10-14 CHANGE The name "Matt Larson"  
11 should be changed to "Dan Larson."

12

13 REASON correction of name

14 PAGE\_31\_\_\_\_ LINE\_1-2\_\_\_\_ CHANGE \_\_\_\_\_ "Mike Leer or Shear" shoul

15 be changed to "Matt Piro and Dan Larson"

16

17 REASON correction of names

18 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

19

20 REASON \_\_\_\_\_

21 PAGE \_\_\_\_\_ LINE \_\_\_\_\_ CHANGE \_\_\_\_\_

23 REASON PAGE LINE CHANGE

24 Mercedes R. Carnethon - PhD Date

25 REASON

1       24 Hour Fitness Worldwide, Inc v. Continental Casualty Company  
2       Mercedes R. Carnethon , PhD (#6059198)

## ACKNOWLEDGEMENT OF DEPONENT

I, Mercedes R. Carnethon , PhD, do hereby declare that I  
have read the foregoing transcript, I have made any  
corrections, additions, or changes I deemed necessary as  
noted above to be appended hereto, and that the same is  
a true, correct and complete transcript of the testimony  
given by me.

Wolfs

09-29-2023

12 | Mercedes R. Carnethon , PhD

Date

13 \*If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

NOTARY PUBLIC